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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Periodic Reporting (Proposal Seven)	))))	Docket No. RM2023-2

COMMENTS OF MAILER ASSOCIATIONS IN OPPOSITION TO THE PETITION OF THE UNITED STATES POSTAL SERVICE
(December 27, 2022)

Pursuant to Order No. 6369, the undersigned mailer associations[1] submit these comments urging the Commission to reject the Postal Service's Proposal Seven. Proposal Seven seeks to "make a one-time adjustment in the FY 2022 Annual Compliance Report to exclude from institutional costs the extraordinary $57 billion negative expense representing the reversal by the Postal Service Reform Act of all past due retiree health benefit payments that were unpaid between September 2012 and September 2021."[2]

The Commission should deny the Postal Service's request, because it would not "improve the quality, accuracy, or completeness of Postal Service data" as is statutorily required.[3] Rather, the proposal would present a distorted picture of the Postal Service's financial position by ignoring the very real – and indeed, in the Postal Service's own

[1] The undersigned mailer associations are the Alliance of Nonprofit Mailers, the American Catalog Mailers Association, the Association for Postal Commerce, the Major Mailers Association, the National Association of Presort Mailers, the National Postal Policy Council, and N/MA – The News/Media Alliance.
[2] USPS Petition at 1.
[3] 39 U.S.C. § 3652(e)(2).

words, “massive” – impact of the PSRA on the Postal Service’s FY 2022 institutional costs.

While the Postal Service raises concerns regarding how application of the existing principle would impact the appropriate share calculation and density authority, the Commission’s decision should not turn on these implications. The focus of this proceeding is on ensuring reporting of accurate data, not on how the Postal Service and Commission will subsequently use that data. Nevertheless, we address these areas in response to the arguments raised in the Postal Service's petition.

The USPS Provides No Sound Basis for Changing the Established Analytical Principle

The Postal Service’s FY 2021 Summary Description of USPS Costing Methods states that the amortized expenses associated with the unfunded liability for prior year retiree health benefits (Cost Segment 18; Component 203) “are … treated as institutional costs.”[4] The Commission recognizes that treating prior year RHB costs as institutional costs is the accepted analytical principle.[5] It is also the correct principle.

Institutional costs are simply “those costs that are not attributable costs, and are equal to the difference between total and attributable costs.”[6] This Commission-sanctioned definition does not exclude from institutional costs allegedly “extraordinary” negative expenses, nor “unique and non-recurring accounting occurrences that are the result of statutory change.” The prior year RHB costs at issue in this docket “are

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[4] *See* Sum Desc at 18.3.6.2 (Retiree Health Benefits (Prior Year) – Component 203); *see also id.* at 18-2 (showing that RHB prior year costs are entirely treated as institutional, or “other,” costs).
[5] Docket No. RM2023-1, Order No. 6363 at 9 (Dec. 9, 2022).
[6] USPS FY 2017 Annual Compliance Determination Report at 9 (Mar. 29, 2018).

considered to be unrelated to volume for this fiscal year" and are thus properly categorized as institutional.[7]

The Postal Service's primary basis for seeking a change to this established principle appears to be that it believes the PSRA's cancellation of $57 billion in these institutional costs will result in negative institutional costs that the Postal Service mischaracterizes as "nonsensical."[8] But negative institutional costs, while atypical, are not nonsensical in this instance – they are the unsurprising and appropriate result of Congressional action that removes a massive amount of costs from the Postal Service's balance sheet. The Postal Service cites no authority in support of its proposed exclusion of these prior year RHB costs from its calculation of institutional costs, and the PSRA lends no support to such a position.

The Postal Service's repeated references to the $57 billion reversal as "extraordinary" or to the statutory change as "unique" are red herrings. Whether extraordinary or commonplace, institutional costs must be included in the CRA in order for that regulatory analysis to be accurate. Nothing is so "extraordinary" as to justify ignoring important statutory provisions that Congress enacted simply because they might be regulatorily inconvenient for the Postal Service. Indeed, the PSRA's cancellation of $57 billion in accrued institutional costs was a windfall for the Postal Service; one that the operator long sought and applauded upon passage.[9]

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[7] *See* Sum Desc at 18.3.6.2, 18-21.

[8] USPS Proposal at 1, 7 (note that, to avoid confusion stemming from overlapping page numbers in the USPS's Petition, we refer to the first two pages of the USPS's 12-page pleading as the "Petition" and we refer to pages 3-12 of the pleading (i.e., pages 1-10 of the document entitled Proposal Seven) as the "Proposal.").

[9] "U.S. Postal Service Applauds Senate Passage of Postal Service Reform Act," (Mar. 8, 2022), *available at https://about.usps.com/newsroom/national-releases/2022/0308-usps-applauds-senate-passage-of-postal-service-reform-act.htm.*

The Postal Service has elsewhere described the PSRA's RHB-relief provision as legislation that was foreseeable and long-expected, such that its enactment did not justify a fresh review of the market-dominant ratemaking system:

> the PSRA is not "an unforeseen change" such as might arguably warrant review….Indeed, throughout Docket No. RM2017-3, the Commission received – and appropriately rejected – numerous pleas to shirk its statutory responsibility because of the years-long pendency of postal reform legislation that would eliminate the Postal Service's retiree health benefits (RHB) prefunding payments***.***.Indeed, the Commission anticipated such a reform by designing the retirement rate authority to automatically adjust to a change in the RHB prefunding obligations.[10]

In the present docket, ironically, the Postal Service pleads for the Commission to "shirk its statutory responsibility" by ignoring Congress' mandate that $57 billion in RHB prefunding payment obligations be eliminated from the Postal Service's institutional costs. The Postal Service's main justification for this is that it claims having negative institutional costs would be "nonsensical" or, alternatively, "irrational," "absurd," or "unusual."[11]

Negative Institutional Costs in FY 2022 Are Not "Nonsensical" – They Are Reality

Negative institutional costs are "unusual," but they accurately describe the level of institutional costs in FY 2022 because Congress reversed $57 billion in prior year RHB obligations that are unequivocally treated as institutional costs for *both* accounting and regulatory purposes. The Postal Service certainly did not believe it to be "nonsensical," "irrational," or "absurd" for the Commission to treat positive prior year RHB prefunding costs as positive institutional costs.

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[10] Docket Nos. RM2022-5 and RM2022-6, USPS Motion to Reject Petitions for Rulemaking at 8 (Apr. 20, 2022) (internal citations omitted).
[11] USPS Proposal at 6, 7, 10 ("nonsensical"), 7 ("irrational"), 5 ("absurd"), and 3 ("unusual").

The Postal Service will treat other prior year personnel benefits such as CSRS, FERS, and workers' compensation as institutional costs this fiscal year, as it should. It should not remove prior year RHB costs from institutional costs merely because those RHB costs will be negative in FY 2022. In fact, having negative institutional costs for prior year personnel benefits is not unprecedented: prior year workers' compensation will result in a negative $1.8 billion contribution to institutional costs in FY 2021.[12] A very large, one-time, Congressionally mandated reversal of prior year RHB costs can naturally result in negative institutional costs overall. Ignoring this reversal would betray an accurate depiction of FY 2022 for the Postal Service.

The Postal Service has already accounted for the $57 billion reversal in its financial reports; it must similarly account for the reversal in its regulatory filings *as an institutional cost*. The Commission appears to suggest that if the negative $57 billion were able to be reported in "Miscellaneous Items" in the CRA report, then the Postal Service need not adhere to the accepted analytical principle requiring prior year costs to be treated as institutional.[13] This is wrong. Such an accounting sleight-of-hand does not address the substantive point or make the $57 billion reversal disappear. The $57 billion cost that Congress has cancelled is comprised of prior year costs that are not attributable and are thus, by definition, institutional costs regardless of in which "bucket" the Postal Service places it.

Accounting for the $57 billion negative institutional cost in this proceeding is no more distortive than the previous inclusion of the accrued prefunding amounts that the

[12] *See* Sum Desc at 18-2 (showing cost component 205 – prior year workers' compensation – as having $ (1,799,949) (in thousands) in "other," or institutional costs).
[13] *See* Docket No. RM2023-1, Order No. 6363 at 9 (Dec. 9, 2022).

PSRA eliminated. A trend analysis of prior years would show a growing accumulated deficit as total Postal Service costs, driven by PAEA's prefunding requirement, exceed Postal Service revenues. The *elimination* of the $57 billion obligation is what changes the trend, not the *recording* of the change, and that impact must be reflected in the CRA. Only by recognizing the elimination of these significant costs can the Commission accurately assess the Postal Service's current financial condition.

Proper Accounting of the $57 Billion Negative Expense Does Not Impair Compliance with the Appropriate Share Provision

The Postal Service also claims that, "[w]ith negative institutional costs, evaluation of compliance with the appropriate share provision would be impossible."[14] Not so: recognizing the $57 billion as a negative institutional cost presents no problems for determining whether competitive products have sufficiently contributed to the Postal Service's institutional costs.[15] If institutional costs in a fiscal year are negative, then the minimum contribution will also be negative. Thus, in that one year, if competitive products meet the other two statutory requirements -- covering their attributable costs collectively and individually -- the minimum contribution requirement would be met by default.

In any event, the contribution from competitive products has far exceeded the minimum contribution in every year since PAEA was passed—including when the Postal Service's institutional costs included the unpaid RHB payment obligations—and there is no reason to believe the contribution would be insufficient this year even if the $57 billion were improperly excluded from institutional costs.

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[14] USPS August 12, 2022 Letter, at 2.
[15] 39 U.S.C. § 3633(a)(3).

The Cancelled $57 Billion Is Indisputably an Institutional Cost That Is Captured By the Density-Rate Formula That the Commission Created

The Postal Service also claims that "nullifying the density authority due to the PSRA forgiveness of RHB prefunding payments would interfere and disrupt the regulatory rationale behind the density-based authority."[16] This claim is specious.

The density-based supplemental rate authority ostensibly addresses increases in the unit costs of delivering mail. It does so through the use of a formula designed to capture those increases and provide rate authority to compensate for those increases. Importantly, the density formula does not entitle the Postal Service to receipt of density authority in every year. If events, either within or outside of the Postal Service's control, reduce the unit costs of delivering mail as determined by the formula, USPS will not receive any density rate authority.

In a year in which the Postal Service has benefitted from an Act of Congress that materially and massively reduced its institutional costs, the density authority formula appropriately indicates the Postal Service should not receive additional rate authority. There is nothing "nonsensical" about the Postal Service failing to earn supplemental rate authority that is tied to unit cost increases in a fiscal year when Congress enacted legislation that massively reduced the Postal Service's unit costs. The PSRA's elimination of RHB obligations and the accumulated deficit resulting from failure to pay them has significantly improved the Postal Service's financial position, as Congress intended (and as the Postal Service had hoped). The Postal Service should be jubilant, rather than seeking ways in which to mis-categorize negative institutional costs. Indeed, its $57 billion cost savings is more than ***100 times*** the annual revenue that

[16] Order No. 6369 at 5 (citing USPS Proposal at 5-7).

would otherwise have been generated by the density rate authority. Elimination of the density authority in one year is consistent with this improvement.

Importantly, recognizing the negative institutional costs resulting from the elimination of this $57 billion obligation in FY 2022 will not impact density authority in future years. There would be a one-time elimination of density authority resulting from a one-time circumstance of negative institutional costs. If density declines in FY 2023, and institutional costs are positive (as they likely will be), the Postal Service will once again have access to density authority. Thus, regardless of the merits of providing density authority in the first place, the fact that applying established analytical principles would result in the elimination of density authority in the next price change does not support a change in those analytical principles.

While the specific goal of the density authority is to address unit cost increases, the broader regulatory rationale behind the Commission's award of density-based authority was to provide the Postal Service with above-CPI pricing power upon finding that the CPI-cap system did not permit the Postal Service to achieve financial stability. The Commission so concluded because it found that "the Postal Service's total revenue did not exceed the sum of its attributable and institutional costs in any year of the PAEA era, jeopardizing the financial health of the Postal Service."[17] These institutional costs included in large part the Postal Service's RHB prefunding obligations, which were "treated as part of total costs in the annual CRA report and the Form 10-K financial statements filed with the Commission, both of which are sources of data in the Commission's financial stability analysis."[18]

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[17] Docket No. RM2017-3, Order No. 4257 at 168 (Dec. 1, 2017).
[18] *Id.* at 158.

The Postal Service insisted that these costs be accounted for when evaluating its financial health during the ten-year rate review, even though the Service was not actually paying them. It admonished that "the Commission also cannot disregard these payments simply because the Postal Service has, under the current system, defaulted on the past six RHB prefunding payments (totaling $33.9 billion), without any legal consequences."[19] The failure to pay prior year RHB obligations "did not constitute a determination by the Postal Service that the payments, which are mandated by statute, were unimportant."[20] Yet, the cancellation of these prior year RHB obligations was also mandated by statute and is equally important.

That negative institutional costs would likely cause the density factor to be zero does not justify a different result. The Postal Service is not entitled to a density adjustment every year – increased density or reduced institutional costs can both result in the absence of density authority. The Commission has repeatedly defended its density formula against mailers' objections that it does not account for improvements in the Postal Service's condition caused by exogenous events, such as cash infusions from Congress or growth in contribution from competitive products that offsets any negative impact of declining density,[21] on the basis that the formula it developed purposely does not account for such changes. Institutional costs, however, are an integral part of the density formula, and the elimination of the $57 billion obligation undoubtedly reduces the Postal Service's institutional costs, making them negative

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[19] Docket No. RM2017-3, Comments of the United States Postal Service at 68 (Mar. 20, 2017).
[20] *Id.* at 69.
[21] *See, e.g.*, Report on Rate Increases for Market Dominant Products, Report to the House Committee on Appropriations, at 26-27, 29-30, 44-46 (Dec. 9, 2022), *available at* https://www.prc.gov/docs/123/123720/Rate%20Increases%20for%20M-D%20Products.pdf.

overall. Calculation of this year's density authority must reflect this fact, and a straightforward application of the formula would do so.

Conclusion

The longstanding analytical principle of treating prior year RHB costs as institutional costs best serves the statutory goal of providing an accurate and complete picture of the Postal Service's financial condition. The application of this principle to the PSRA's elimination of $57 billion in Postal Service obligations (and institutional costs) does not produce absurd results, just as the Postal Service's financial reports, which record the impact of this elimination, are not absurd. Rather, they accurately reflect the impact of the PSRA on the Postal Service's finances. The Commission should therefore deny the Postal Service's petition.

Respectfully submitted,

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